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Supreme Court of The United States

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE and WALLACE D. BRADFORD,
Appellants,

vs.

EARL L. CLARK, Drain Commissioner of Oakland County, Michigan, and BOARD OF SUPERVISORS of Oakland County, CITY OF ROYAL OAK, Intervenor.

AMICI CURIAE BRIEF

FOR

THE STATE OF MICHIGAN

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I.

Request for Leave to File Brief Amici Curiae.

Comes now the State of Michigan, by Herbert J. Rushton, Attorney General of the State of Michigan and Edmund E. Shepherd, Solicitor General of the State of Michigan, and respectfully request permission to file brief, amici curiae, in the above entitled cause.

II.

Reasons for Request to File Brief.

The pendency of the above entitled litigation has but recently come to the attention of the office of the Attorney General for the State of Michigan and in view of the fact that the constitutionality of two important acts is involved, namely Acts 114 and 155 of the Public Acts of Michigan for the year 1937, the State of Michigan has a vital interest in the outcome of the pending litigation for the following reasons:

(a) Under the provisions of Act 114 of 1937, 582,430 parcels of land in Southern Michigan reverted to the State.

(b) Under the provisions of Act 155 of 1937, 526,145 of those parcels were offered for sale at public auction and 406,000 of said parcels were sold.

(c) The Supreme Court of Michigan has held both acts to be constitutional in decisions heretofore rendered.

III.

Statement of Position of the State of Michigan.

The Record, the Motion to Dismiss or Affirm and the briefs filed by Appellees have been perused and by leave of court and consent of counsel, the State of Michigan desires to adopt the brief of Appellees the same as if the same had been filed by the State of Michigan.

In addition thereto we respectfully wish to supplement the same as follows.

IV.

In re Appellee's Motion to Dismiss.

A. Act 114 of 1937.

We urge that a careful reading of the decision of the Michigan Supreme Court (R 40-47) will disclose that the Michigan court did not pass on the constitutionality of Act 114 of Public Acts of 1937.

We further suggest that the pleadings (R 2-7) do not present any question as to the constitutionality of Act 114 of 1937.

We further suggest that petitioners, "Statement of Questions Involved" (R 55) shows that petitioner did not consider the constitutionality of Act 114 of 1937 was involved. There questions were framed by petitioners and accepted as framed (R 56) by Appellees.

We further suggest that perusal of Appellants' brief in the Michigan Supreme Court discloses that no challenge was made to Act 114 of 1937 as being violative of Art. I, Sec. 10, of the United States Constitution.

Wherefore, under the holdings of this court in Honeyman vs. Hanan, 300 U. S. 14 and Southwestern Bell Telephone Company vs. State of Oklahoma, 300 U. S. 206, this court is without jurisdiction to pass on the constitutionality of Act 114 of 1937.

B. Act 155 of 1937.

Act 155 of 1937 prescribed the method for disposal of state owned lands; and how the proceeds of the sale should be divided (R 44). There is no contention by Appellants that they have not received their share of the proceeds of the sales. In view of the fact that, "the drain law must be read and construed together with the general property tax law of the State", and Act 155 of 1937 was an amendment to the general tax law, it is inconceivable that any constitutional rights of petitioners have been invaded by operation of Act 155. It enabled petitioners to salvage the full fruit of their security which otherwise would probably have been a total loss.

We respectfully submit that on the face of the whole picture as presented by petitioners no showing has been made and no persuasive argument adduced indicating that in any way have their rights been prejudiced by operation of Act 155.

V.

Argument and Law on Merits.

In the event this court does not dispose of this case on the Motion to Dismiss we respectfully submit the following:

Acts 114 and 155 of the Michigan Public Acts of 1937 were amendments to the general tax law of Michigan, Act 206 of 1893. Both acts fell in the classification of remedial legislation and are therefore entitled to liberal construction (*Wilson v. City of Pontiac*, 294 M 79).

Redemption rights were affected by Act 114 of 1937 but, "The right of redemption, however, is not a constitutional right but exists only as permitted by statute" (*Keeley v. Sanders,* 99 U. S. 441 — *Dumphey v. Hilton,* 121 Mich. 315) and, "Laws of retroactive character, affecting tax liens which attached prior to such enactment, are not unconstitutional." (*City of Detroit v. Safety Inv. Corp.,* 288 M 511). Statutes which "affect only a remedy for delinquency of the taxpayer • • • do not impair contract obligations or vested rights." (*Baker v. State Land Office Board,* 294 M 587, p. 599.)

Redemption rights were not affected by Act 155 of 1937 and petitioners have received all benefits of the act so no complaints can be made concerning it violating the obligation of contract.

The drain law, Act 316 of 1923, M.S.A. 11.91, "must be read and construed together with the general property tax law of the state" (R 43). The general property tax law was amended by Act 114 and 155 of 1937 and petitioners are complaining because the lands sold under the general tax law and unredeemed from the tax sale were freed from liens when the failure to free such properties from a tax burden exceeding their value would have aggravated a situation approaching disaster, produced nothing for petitioners to apply on their bonds and in addition held such properties fruitless as a source of revenue for all taxing units involved. The effect of these two Acts 114 and 155 of 1937 was to protect petitioners property and rights rather than to dissipate or impair them. Rapid return of 80% of these properties to the tax rolls is proof of the wise exercise by the state of its police powers used to stem an imminent condition of chaos brought about by unwise and over optimistic speculation

which resulted in the loss of homes by thousands of taxpayers through an unbearable tax burden aggravated by economic depression.

VI.

CONCLUSION.

1. Previous to the time appellants purchased their bonds and up to the passage of Act 114 P. A. of 1937 lands offered for sale and bid in by the state became the absolute property of the state five years after the sale, and when sold by the state were sold free from liens and encumbrances. (*Auditor General v. Clifford*, 143 Mich. 626, p. 630)

2. After the passage of Act 114 P. A. of 1937 the five year period in which the state acquired absolute title was shortened to approximately one year and the act specifically mentioned the fact that all liens were cancelled (this had previously been the law under the decision above referred to), and the only effect of Act 114 of 1937 was to accelerate the acquiring of absolute title by the state. Such legislation has never been held to violate the constitution. (Keeley v. Sanders, 99 U. S. 441; Dumphey v. Hilton, 121 Mich. 315.) This general statement of the law is also admitted by appellants (p. 26, Appellants' Brief).

3. Act 155 P. A. of 1937 prescribed the method of sale of lands to which the state had acquired absolute title and specified how the proceeds of the sale should be distributed and appellants have received their share of the proceeds. Consequently Act 155 deprives appellants of

nothing and can not be construed to impair their constitutional rights.

4. Neither Act 114 nor Act 155 of P. A. of 1937 construed severally or jointly deprive appellants of anything. They have been construed to be constitutional under the Michigan constitution by Baker v. State Land Office Board, 294 Mich. 587, and the argument of appellants that they violate Art. I, Sec. 10 of the U. S. Constitution should now be denied by this court.

We respectfully submit that:

1. Neither Act 114 or 155 of 1937 offends the provisions of Art. I, Sec. 10 of the U. S. Constitution.

2. The Motion to Affirm should be granted.

Respectfully submitted,

STATE OF MICHIGAN

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